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Attorneys for Defendant
RICHARD BIRDWELL

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WMCV PHASE 3, LLC, a Delaware limited
Liability company,

Plaintiff,

vs.

SHUSHOK & MCCOY, INC., a Texas
Corporation; MATTHEW J. TRAVIS, an
Individual; MATT TURNER, an individual;
RICHARD BIRDWELL, an individual;
GLOBAL ACCENTS, INC., a California
Corporation; COUTURE INTERNATONAL,
INC., a Quebec corporation; DOES 1 through
X, inclusive; ROE ENTITIES I through X,
inclusive,

Defendants.

Case No: 2:10-CV-00661-RCJ-RJJ

**MOTION TO SET ASIDE
DEFAULT**

Defendant RICHARD BIRDWELL, by and through his attorneys, the law firm of
McCULLOUGH, PEREZ & ASSOCIATES, LTD., moves this Honorable Court for an
order setting aside the default against Defendant RICHARD BIRDWELL.

...

...

...

1 This Motion is made and based on the papers and pleadings on file herein, the
2 Points and Authorities submitted herewith and any additional information the Court may
3 choose to consider.

4 DATED this 18 day of October, 2013

6 McCULLOUGH, PEREZ & ASSOCIATES, LTD

7
8 By: 
9 CHRISTOPHER R. McCULLOUGH, ESQ.

10 Nevada Bar #1138

11 FRANK PEREZ, ESQ.

12 Nevada Bar #5738

13 601 South Rancho Drive, #A-10

14 Las Vegas, Nevada 89106

15 Attorneys for Defendant

16 RICAHRD BIRDWELL

17 **I BACKGROUND**

18 Mr. Birdwell was an employee of Shushok and McCoy Inc. (SMI). Plaintiff
19 WMCV Phase 3 (WMCV) operates commercial space in Las Vegas. WMCV engaged
20 the services of SMI to perform collection agency work on its behalf. The relationship
21 came to a conclusion, however litigation arose when Global Accents, a former tenant of
22 WMCV, claimed to have entered a settlement with WMCV through SMI.

23 WMCV asserted their relationship with SMI had concluded prior to the settlement
24 with the Global Accents (GA). Their position was the settlement was not enforceable.
25 GA contends the settlement was enforceable based upon theories of principal and agency.
26 Through motion practice, the issue for trial was whether SMI had apparent authority to
27
28

1 bind. WMCV.

2 Mr. Bridwell was sued in his individual capacity, as were two other individuals.
3 Mathew Travis and Mathew Turner were the other named individuals. Mr. Travis and
4 Mr. Turner owned SMI. Mr. Travis consistently assured Mr. Birdwell that SMI would
5 provide a defense and pay any judgment entered. Mr. Travis also assured Mr. Birdwell
6 that any settlements entered would include a release of Mr. Birdwell.
7

8 Eventually the attorney retained by SMI withdrew from representation. Mr.
9 Birdwell was assured by Mr. Travis that any resolution would include Mr. Birdwell. Mr.
10 Birdwell was also under the belief; based upon conversation he had with WMCV counsel
11 that they would dismiss him from the case. Apparently, Mr. Birdwell misinterpreted the
12 conversations with opposing counsel.
13

14 On July 6, 2012 WMCV moved to have Mr. Birdwell's answer stricken. The
15 basis as set forth in its motion was because Mr. Birdwell did not personally appear at a
16 court ordered settlement conference. See Exhibit "1"
17

18 On November 7, 2012 a default was entered against Richard Birdwell and Matt
19 Turner. See Exhibit "2".
20

21 Eventually Mr. Travis entered a settlement with WMCV. SMI's pleading were
22 struck when it failed to retain counsel. Mr. Birdwell was unaware the settlement was
23 negotiated until after the trial was conducted. At that time, he learned about the default
24 and that he was not part of a negotiated settlement; despite assurances by Mr. Turner.
25 Mr. Travis also filed a petition for Chapter 13 bankruptcy, and so the trial did not proceed
26 against him on GA's claims.
27
28

1 Trial was conducted on June 11th and 12th. WMCV and GA submitted their own
2 Proposed Findings of Fact. WMCV's proposed finding of fact does not specifically seek
3 a judgment against Mr. Birdwell. GA's proposed findings of fact are inconsistent. The
4 seek determination that the settlement agreement was enforceable based upon apparent
5 authority. If that is true then there was no wrongdoing by Birdwell as it relates to GA. If
6 the settlement was enforceable then there can be no fraud or misrepresentation or resulting
7 damages. Despite seeking to have the settlement agreement negotiated by SMI be found
8 enforceable, they also seek damages based upon an enforceable settlement. In other
9 words, GA's position is the settlement agreement shields them from liability, and if they
10 are correct they were damaged by have the agreement found to be enforceable. This is
11 simply not logical.

12 During the pendency of the matter, Mr. Birdwell was in contact with Mr. Travis.
13 Mr. Birdwell was assured by Mr. Tavis that any settlement reach would include
14 removing Mr. Birdwell from the suit. After the trial Mr. Birdwell learned that GA
15 submitted Proposed Findings in which they sought to hold Mr. Birdwell personally liable.
16 Mr. Birdwell learned a default was entered against him. He questioned Mr. Travis about
17 the settlement that was negotiated with WMCV. Mr. Travis acknowledged that despite
18 prior promises to include Mr. Birdwell in any settlement and release, a release for Mr.
19 Birdwell was not included. Mr. Travis advised Mr. Birdwell the settlement was for
20 approximately \$40,000.

21 Mr. Birdwell comes to the court and seeks to have the default set aside, and
22 prevent an unwarranted judgment be entered against him.
23
24
25
26
27
28

II STANDARD TO SET ASIDE A DEFAULT

Relief from orders is based upon FRCP 60(b) (c) which reads;

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

The United States Supreme Court analyzed excusable neglect in Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 382–83 (1993). The court was analyzing excusable neglect in the context of a bankruptcy, but included FRCP 60(b)(1) in describing the standard for excusable neglect.

1 This history supports our conclusion that the enlargement of
2 prescribed time periods under the "excusable neglect" standard of Rule
3 9006(b)(1) is not limited to situations where the failure to timely file is due
4 to circumstances beyond the control of the filer.

5 Our view that the phrase "excusable neglect" found in Bankruptcy
6 Rule 9006(b)(1) is not limited as petitioner would have it is also strongly
7 supported by the Federal Rules of Civil Procedure, which use that phrase
8 in several places. Indeed, Rule 9006(b)(1) was patterned after Rule 6(b) of
9 those rules.⁵ Under Rule 6(b), where the specified period for the
10 performance of an act has elapsed, a District Court may enlarge the period
11 and permit the tardy act where the omission is the "result of excusable
12 neglect." As with Rule 9006(b)(1), there is no indication that anything
13 other than the commonly accepted meaning of the phrase was intended by
14 its drafters. It is not surprising, then, that in applying Rule 6(b), the courts
15 of appeals have generally recognized that "excusable neglect" may extend
16 to inadvertent delays. Although inadvertence, ignorance of the rules, or
17 mistakes construing the rules do not usually constitute "excusable" neglect,
18 it is clear that **"excusable neglect" under Rule 6(b) is a somewhat "elastic
19 concept"** and is not limited strictly to omissions caused by circumstances
20 beyond the control of the movant. (Emphasis added)

21 The "excusable neglect" standard for allowing late filings is also
22 used elsewhere in the Federal Rules of Civil Procedure. When a party
23 should have asserted a counterclaim but did not, Rule 13(f) permits the
24 counterclaim to be set up by amendment where the omission is due to
25 "oversight, inadvertence, or excusable neglect, or when justice requires."
26 In the context of such a provision, it is difficult indeed to imagine that
27 "excusable neglect" was intended to be limited as petitioner insists it should
28 be.

 The same is true of Rule 60(b)(1), which permits courts to reopen

1 *judgments for reasons of "mistake, inadvertence, surprise, or excusable*
2 *neglect," but only on motion made within one year of the judgment. Rule*
3 *60(b)(6) goes further, however, and empowers the court to reopen a*
4 *judgment even after one year has passed for "any other reason justifying*
5 *relief from the operation of the judgment." These provisions are mutually*
6 *exclusive, and thus a party who failed to take timely action due to*
7 *"excusable neglect" may not seek relief more than a year after the judgment*
8 *by resorting to subsection (6).*

9
10 Mr. Birdwell seeks relief under subsection one; mistake, inadvertence, surprise, or
11 excusable neglect. Mr. Birdwell was under the mistaken belief he was to be included in
12 any resolution reached. He was unaware a default had been entered against him, until he
13 was contact by Mr. Travis post trial.

14
15 When Mr. Birdwell spoke with Mr. Travis, his former employer, he was
16 repeatedly assured that he would be protected. Any settlement would include dismissal
17 of Mr. Birdwell. Equally so when Mr. Birdwell spoke with opposing counsel, he was
18 equally under the impression that he would ultimately be dismissed from the case.

19
20 The basis upon which a default was entered against Mr. Birdwell was because he
21 failed to appear at a settlement conference. Mr. Birdwell, who at the time was not
22 represented by counsel, believed any settlement on his behalf was being taken care of by
23 his former employer. He relied upon statements of Mr. Travis in that regard.

24
25 Prior discussions between Mr. Birdwell and counsel for WMCV revolved around
26 Mr. Birdwell's lack of funds to resolve any claim. Mr. Birdwell and WMCV counsel
27 joked that WMCV would not seek to recover Mr. Birdwell's bulldog, as it was his only
28

1 assets.

2 As a pro se Defendant Mr. Birdwell's failure to appear at the settlement
3 conference is excusable. He believed his former employer was taking care of things. His
4 discussions with WMCV attorney lead him to believe they were not seeking money from
5 him; although, that appears to be a misunderstanding of opposing counsel's intentions.
6 None the less, Mr. Birdwell thought his interests were being protected.
7

8 In this instance, only a default has been entered. A default judgment was not
9 applied for prior to trial. Mr. Birdwell learned of the default only after the trial
10 concluded and has moved promptly to set aside the default. WMCV has not sought, at
11 least according to its proposed findings of fact a judgment directly against Mr. Birdwell
12 as of yet. GA seeks contradictory positions, if the settlement agreement is valid and GS
13 owes nothing to WMCV, GA is still seeking damages against Mr. Birdwell.
14
15

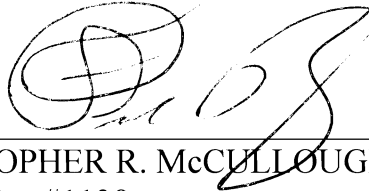
16 In weighing the prejudices, setting aside the default against WMCV holds little
17 prejudice against WMCV since it did not seek at trial a judgment against Mr. Birdwell.
18 Setting aside the default hold little prejudice against GA, as it simply allows Mr. Birdwell
19 and opportunity to argue against inconsistent positions taken by GA. The prejudice
20 against Mr. Birdwell is great. He faces potential judgments for simply being an
21 employee of a company that potentially negotiated a settlement beyond its authority. Mr.
22 Birdwell was not an owner or director of the company, but an employee.
23
24

25 Mr. Birdwell submits good cause exists to set aside the default entered in the
26 matter. His non-attendance at the settlement conference constitutes excusable neglect in
27 that he believed his former employer was taking care of the matter, and settlement would
28

1 have included Mr. Birdwell. The court should enter an order setting aside the default
2 against Mr. Birdwell.

3 DATED this 18 day of October, 2013

4 McCULLOUGH, PEREZ & ASSOCIATES, LTD

5
6 By: 
7 CHRISTOPHER R. McCULLOUGH, ESQ.

8 Nevada Bar #1138

9 FRANK PEREZ, ESQ.

10 Nevada Bar #5738

11 601 South Rancho Drive, #A-10

12 Las Vegas, Nevada 89106

13 Attorneys for Defendant

14 RICAHRD BIRDWELL

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b) and Section IV of the District of Nevada Electronic Filing Procedures, I hereby certify that I am an employee of McCULLOUGH, PEREZ & ASSOCIATES, LTD., and that on the 21st day of October, 2013, I caused to be served a true and correct copy of the foregoing document by E-Service by filing the foregoing with the Clerk of Court using the CM/ECF system, which will electronically mail the filing to the following email address:

TERRY A. COFFING, ESQ.

tcoffing@maclaw.com

jgerber@maclaw.com

WILLIAM R. URGAS, ESQ.

FedCt@juww.com

MICHAEL B. LEE, ESQ.

mike@mblnv.com

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

MATT TURNER

46 Cimarron Drive

Trophy Club, TX 76262



Angie Gardner, Employee of McCULLOUGH, PEREZ & ASSOCIATES, LTD.

AFFIDAVIT OF FRANK PEREZ, ESQ.

STATE OF NEVADA)
 :SS
COUNTY OF CLARK)

FRANK PEREZ, ESQ., being first duly sworn deposes and says:

1. That I am knowledgeable about all matters set forth in this affidavit and know them to be true, except where stated upon information and belief, and in those instances believe them to be true.

2. That your affiant is competent to testify regarding all factual matters set forth in this affidavit.

3. That this affidavit is prepared and executed in connection with Defendant Richard Birdwell's Motion to Set Aside Default, in the case known as *WMCV PHASE 3, LLC vs. SHUSHOK & MCCOY, INC., et al.*, Case No. 2:10-cv-00661-RCJ-RJJ.

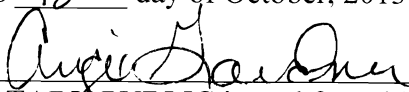
4. That your affiant contacted counsel for both WMCV Phase 3, LLC and Global Accents, Inc., in order to attempt to resolve a default which had been entered against Mr. Birdwell. Initial contact in early September with written correspondence on September 19, 2013. When no resolution was capable of being reached, a follow up call was placed on October 16, 2013, advising a motion to set aside the default was going to be filed.

Further affiant saith naught.

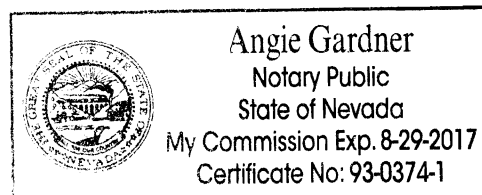


FRANK PEREZ, ESQ.

SUBSCRIBED and **SWORN** before me
this 18th day of October, 2013.



NOTARY PUBLIC in and for said
County and State



AFFIDAVIT OF RICHARD BIRDWELL

STATE OF Texas)
COUNTY OF Denton) :ss

RICHARD BIRDWELL, being first duly sworn deposes and says:

1. That I am knowledgeable about all matters set forth in this affidavit and know them to be true, except where stated upon information and belief, and in those instances believe them to be true.

2. That your affiant is competent to testify regarding all factual matters set forth in this affidavit.

3. That this affidavit is prepared and executed in connection with affiant's Motion to Set Aside Default, in the case known as *WMCV PHASE 3, LLC vs. SHUSHOK & MCCOY, INC., et al.*, Case No. 2:10-cv-00661-RCJ-RJJ.

4. When the lawsuit first commenced, I was an employee of Shushoka & McCoy, Inc. (SMI). SMI is a collection agency and was owned by two gentlemen, Matthew J. Travis and Matt Turner. I was not a principal of the company, a shareholder nor an officer but merely an employee. Initially the company retained counsel to represent itself and all the individuals named as Defendants, including myself. I was repeatedly assured by Mr. Travis that the company would pay for the defense and assured that any judgment or settlement would be paid for by the company. I was assured by Matt Travis and Matt Turner at the time we were negotiating on behalf of World Market Center that SMI had signed contracts, ie placement forms, for the debts that allowed SMI to negotiate and settle on the client's behalf.

5. As matters progressed, the attorney that was representing me and the company withdrew. At that time I was unaware that a basis for the withdrawal was failure to pay attorney's fees. I was under the impression the company was taking care of things and was repeatedly assured by

1 Mr. Travis that my interests were being protected.

2 6. I appeared at my deposition, provided writing samples and answered questions. After the
3 deposition concluded, I continued to speak with World Market Center's then counsel Matthew
4 Cecil. It was my impression from the conversations with Mr. Cecil that he was going to work to
5 get me dismissed from the case. I later learned that was a misapprehension on my part.
6 However, my discussions with him lead me to believe that the World Market Center did not
7 believe I should remain in the case. I had multiple discussions with Mr. Cecil regarding being
8 dropped from the case. I had multiple conversations with him regarding my complete lack of
9 funds to make a settlement offers as I had no assets. Mr. Cecil and I joked that they would not
10 seek to take my pet bulldog away as that would be only asset that was of value.
11

12 7. After my deposition I asked Mr. Cecil about what type of representation SMI and I
13 received for the \$50,000.00 reportedly paid to our attorney. Mr. Cecil looked at me surprisingly
14 and replied that our attorneys were never paid \$50,000.00 and withdrew for non-payment. I then
15 inquired of Mr. Travis whether or not our attorneys were paid but he could not provide me that
16 assurance as Matt Turner was in charge of sending the checks.
17

18 8. I would call Mr. Cecil several times over the next few months hoping to hear that I had
19 been released from the litigation. However communication dropped off over time. I would
20 answer questions that he had but never heard further of my formal removal from the case. Later
21 I learned that Mr. Cecil joined another firm and was no longer assigned to the case. During this
22 entire time period I spoke with Mr. Travis regularly and he assured me the entire time no matter
23 what happened he would end up settling and dropping me from the lawsuit and there would be a
24 stipulation in any settlement entered which would include a release of me.
25

26 9. I was always under the impression that my former employer had arranged to assure my
27 protection from any judgment and would include me in any resolutions.
28

10. Only after a trial concluded I was informed by Mr. Travis that I needed to look at findings of fact that had been submitted, did I learn that judgments were still being attempted against me. It was at that time I learned that a default had been entered against me and Mr. Turner however I did not see Mr. Travis' name on the document seeking a default. I spoke with Mr. Travis and he informed me that he had actually settled the case. I immediately asked if I was included based on our prior conversations to which he replied he did not know. I inquired as to when he settled to which he replied approximately six weeks earlier and I asked him how much and his answer was \$40,000.00.

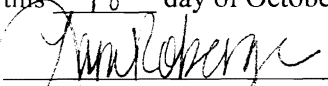
11. Had I known that my former employer and boss, Mr. Travis, was misinforming I would have taken additional steps to assure my appearance in any trial or court proceeding. I was truly under the impression that interests were being protected by my former employer and that the settlement he was apparently negotiating would have included me. I have now learned that was not the case.

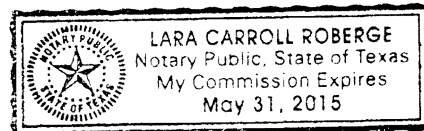
12. I request that the default be set aside so I am not facing a potential judgment based on my misunderstanding of what was transpiring during the course of the litigation.

Further affiant saith naught.


 RICHARD BIRDWELL

SUBSCRIBED and SWORN before me
 this 18th day of October, 2013.


 NOTARY PUBLIC in and for said
 County and State



AFFIDAVIT OF MATTHEW J. TRAVIS

STATE OF Texas)

COUNTY OF Denton)^{SS}

MATTHEW J. TRAVIS, being first duly sworn deposes and says:

1. That I am knowledgeable about all matters set forth in this affidavit and know them to be true, except where stated upon information and belief, and in those instances believe them to be true.

2. That your affiant is competent to testify regarding all factual matters set forth in this affidavit.

3. That this affidavit is prepared and executed in connection with Defendant Richard Birdwell's Motion to Set Aside Default, in the case known as *WMCV PHASE 3, LLC* vs. *SHUSHOK & MCCOY, INC., et al.*, Case No. 2:10-cv-00661-RCJ-RJJ.

4. That your affiant is the former owner of Shushok & McCoy, Inc. and I am knowledgeable about the information set forth herein.

5. During the course of the litigation with WMCV Phase 3, LLC, I informed Richard Birdwell that his former employer Shushok & McCoy, Inc., would retain counsel in order to protect Mr. Birdwell's interest. I also assured him that he would be included in any settlement which was ultimately reached.

6. Eventually a settlement with the Plaintiff was reached, but it did not include Richard Birdwell in the settlement documents. I did not inform Mr. Birdwell that settlement was reached at that time nor did I inform him at that time he was not included in the settlement.

7. At a later time Mr. Birdwell contacted me and I informed him that I did in fact reach a settlement but his name was not included in the resolution.

...

1 Further affiant saith naught.

2
3 MATTHEW J. TRAVIS

4
5 **SUBSCRIBED** and **SWORN** before me
6 this 18th day of October, 2013.

7 Lara Carroll Roberge
8 **NOTARY PUBLIC** in and for said
County and State

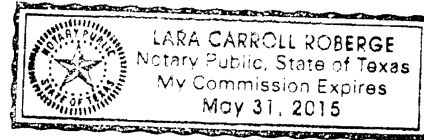


EXHIBIT “1”

EXHIBIT “1”

MARQUIS AURBACH COFFING

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(702) 382-0711 FAX: (702) 382-5816

1 **Marquis & Aurbach**
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2 Nevada Bar No. 4949
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4 Las Vegas, Nevada 89145
Telephone: (702) 382-0711
5 Facsimile: (702) 382-5816
tcoffing@maclaw.com
6 mcecil@maclaw.com
Attorneys for Plaintiff

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 WMCV PHASE 3, LLC, a Delaware limited
liability company,

11 Plaintiff,

Case No.: 2:10-cv-00661-GMN-RJJ

12 vs.

13 SHUSHOK & MCCOY, INC., a Texas
14 corporation; MATTHEW J. TRAVIS, an
individual; MATT TURNER, an individual;
15 RICHARD BIRDWELL, an individual;
GLOBAL ACCENTS, INC., a California
16 corporation; COUTURE INTERNATIONAL,
INC., a Quebec corporation; DOES I through X,
17 inclusive; ROE ENTITIES I through X,
inclusive,

18 Defendants.
19

20 **MOTION TO STRIKE RICHARD BIRDWELL'S ANSWER AND APPLICATION TO**
21 **ENTER DEFAULT, OR IN THE ALTERNATIVE MOTION FOR AN ORDER TO**
22 **SHOW CAUSE WHY RICHARD BIRDWELL'S ANSWER SHOULD NOT BE**
STRICKEN AND DEFAULT ENTERED

23 Plaintiff WMCV PHASE 3, LLC, by and through its attorneys, Marquis Aurbach
24 Coffing, hereby submits this MOTION TO STRIKE RICHARD BIRDWELL'S ANSWER AND
25 APPLICATION TO ENTER DEFAULT, OR IN THE ALTERNATIVE, MOTION FOR AN
26 ORDER TO SHOW CAUSE WHY RICHARD BIRDWELL'S ANSWER SHOULD NOT BE
27 STRICKEN AND DEFAULT ENTERED.
28

1 **I. INTRODUCTION.**

2 Defendant Richard Birdwell's Answer should be stricken for failing to participate in this
3 matter as required. Alternatively, this Court should issue an order to show cause why Richard
4 Birdwell's Answer should not be stricken.

5 **II. FACTUAL BACKGROUND.**

6 1. On April 19, 2012, this Court ordered the parties, including Birdwell, to
7 participate in a settlement conference on May 18, 2012 at 8:30 AM, ordering "All counsel of
8 record who will be participating in the trial of this case, all parties appearing pro se, if any, and
9 **all individual parties must be present. No exceptions are made to this requirement.**"
10 (emphasis in original). ECF No. 124.

11 2. The Court served the April 19, 2012 Order on Birdwell. ECF Nos. 124, 125.

12 3. On May 8, 2012, this Court ordered the settlement conference changed to May 24,
13 2012, at 1:30 PM. ECF No. 129.

14 4. On May 9, 2012, the undersigned served Birdwell with the April 19, 2012 Order
15 (ECF No. 124) and with notice that the settlement conference had been changed to May 24, 2012
16 via certified mail. ECF Nos. 129, 130, 131, 133, and 134.

17 5. Birdwell did not appear in person or telephonically for the mandatory settlement
18 conference.

19 **III. LEGAL ARGUMENT.**

20 Birdwell refused to acknowledge this Court's authority and refused to participate in the
21 Court Ordered mandatory settlement conference. The April 19, 2012 Order required Birdwell's
22 presence at the settlement conference, with **no exceptions**. Nevertheless, Birdwell did not attend
23 the settlement conference. There is no point in this Court ordering Birdwell's mandatory
24 presence at the settlement conference, unless a sanction arises for Birdwell's failure to be
25 present. Consequently, Plaintiff respectfully requests the Court: (1) strike Birdwell's answer
26 from the record; and (2) enter default and allow Plaintiff to proceed with a default judgment
27 against Birdwell. Alternatively, Plaintiff requests the Court order Birdwell to show cause why
28

1 this Court should not strike Birdwell's answer and allow Plaintiff to obtain default judgment
2 against him.

3 Dated this 6th day of July, 2012.

4 MARQUIS AURBACH COFFING

5
6 /s/ Matthew T. Cecil
7 Terry A. Coffing, Esq.
8 Nevada Bar No. 4949
9 Matthew T. Cecil, Esq.
10 Nevada Bar No. 9525
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorneys for Plaintiff
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MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am employed with the law firm of Marquis Aurbach Coffing, and that on the 6th day of July, 2012, I electronically filed the foregoing **Motion To Strike Richard Birdwell's Answer And Application To Enter Default, Or In The Alternative, Motion For An Order To Show Cause Why Richard Birdwell's Answer Should Not Be Stricken And Default Entered** with the Clerk of the U.S. District Court for the State of Nevada, using the CM/ECF electronic filing system which will cause the documents to be electronically served upon the following counsel of record:

Michael B. Lee, P.C.
Michael B. Lee, Esq.
2000 South Eastern Ave.
Las Vegas, Nevada 89104
Attorney for Defendant
Global Accents, Inc.

William R. Urga, Esq.
Jolly Urga Wirth Woodbury & Standish
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
Attorneys for Defendant
Couture International

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Matt Turner
c/o Shushok & McCoy, Inc.
2637 Ira E. Woods, Suite 100
Grapevine, TX 76051

Matt Turner
46 Cimarron Dr.
Trophy Club, Texas 76262

Matthew Travis
3300 Tori Trail
Keller, TX 76248

Richard Birdwell
2804 Red Wolf Drive
Fort Worth, TX 76244

Shushok & McCoy, Inc.
2637 Ira E. Woods, Suite 100
Grapevine, TX 76051

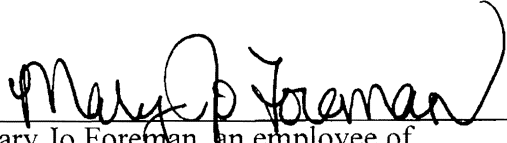

Mary Jo Foreman, an employee of
Marquis Aurbach Coffing

EXHIBIT “2”

EXHIBIT “2”

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WMCV Phase 3, LLC, ET AL.,)
)
Plaintiff(s),)
)
v.)
)
Couture International, Inc., et al.,)
)
Defendant(s).)
_____)

CV 2:10-cv-00661-GMN-RJJ

DEFAULT

It appearing from the records in the above-entitled action that Summons issued on
the Amended Complaint November 4, 2010
(Original, Amended, etc) (Date Complaint was filed)

has been regularly served upon each of the Defendants hereinafter named; and it
appearing from the affidavit of counsel or Plaintiff and the records herein that each of
said Defendants has failed to plead or otherwise defend in said action as required by said
Summons and provided by the Federal Rules of Civil Procedure,

Now, therefore, on request of counsel for Plaintiff, the DEFAULT, as aforesaid, of
each of the following Defendants RICHARD BIRDWELL and MATT TURNER

in the above-entitled action is hereby entered.

DATED: 11/7/2012

LANCE S. WILSON, CLERK

By: M. JAIME
Deputy Clerk